

REMARKS

Claims 22 through 38 are pending in this Continuation Application. The following remarks are submitted relative to the Final Rejection in the Parent Application 09/914,043 and the interview with Examiner Bolden on 11 December 2003 in connection with the Parent Application.

As pointed out in the interview, there are several applications including the present application which may be considered to be related. Several are before Examiner Bolden. To complete the record, all potentially related applications are identified on the Statement of Related Cases filed concurrently.

During the interview, Applicants' representative preliminarily responded to the rejection of record by demonstrating that none of the examples in the Shelestak reference anticipated the claims of the application. The Examiner maintained the position that while the dominant wavelength of the Shelstak reference did not anticipate any of the claims of the application, the ranges in the reference were "sufficiently specific" to anticipate the claims. It was pointed out by Applicants' representative that there was no evidence of linearity or correlation as between purity (P) and TLA4 in the prior art. The Examiner indicated during the interview that the evidence in this regard was inconclusive.

The prior rejections of record in the parent application are respectfully traversed. They are hereafter addressed in the same sequence as in the Final Rejection of 11 August 2003 in the parent application.

In the parent application, all pending claims were rejected under 35 U.S.C. §102(b) based on Shelestak U.S. 6,313,053. The Examiner relied principally on the MPEP 2131.03 for the proposition that a reference is "sufficiently specific" to anticipate the present claims.

This is respectfully traversed for the following reasons.

Consider first independent Claim 22. This claim recites five aspects of the glass:

- a) a particular range of Fe_2O_3 ; (0.15-1.1%)
- b) a redox factor not exceeding 45%;
- c) a dominant wavelength in the range 491-493;
- d) TLA4 and P which satisfy a linear formula; and
- e) less than 0.1% of TiO_2 .

The rejection in the parent case (Final Rejection, page 3) states that the Shelestak reference, inter alia:

- a) has a range of Fe_2O_3 from 0.40 to 1.0%;
- b) has a redox ratio of greater than 0.356 to .60;
- c) has a dominant wavelength in the range 485 to 492;
- d) nothing is said in the rejection relative to the linear formula ; and
- e) has 0 to 0.5 % of TiO_2 .

The rejection indicates that the ranges of coloring agents and properties are sufficiently specific to meet the limitations of the claims, citing MPEP 2131.03.

Without conceding that “sufficiently specific” as explained in MPEP 2131.03 is an appropriate basis for a rejection under section 102 for anticipation, Applicants respectfully traverse the application of “sufficiently specific” to the present claims.

Consider first the range of Fe_2O_3 . The range in the Abstract of the reference partially overlaps the claimed range. The Examples in Shelestak (both actual and computer modeled) extend from a low of 0.141 (Example 17) to a high of 0.600 (Example 23). Since the range is provided to 3 decimal places, this encompasses a range of 600-141 or over 450 different amounts of Fe_2O_3 . Nothing in the Final Rejection explains how this is sufficiently specific.

Consider next the redox factor. Again, the Examples in Shelestak are expressed to three decimal places. Thus the range in the abstract, to three decimal places, is 600-350 or 250 possible redox factors.

Consider next the dominant wavelength. While the Shelestak abstract refers to a range of 485 to 492 nm , the examples (in nm) are expressed to one decimal place. This indicates 492 - 485 (i.e., 7) x 10 or 70 possible dominant wavelengths.

The number of possibilities (i.e., permutations) of these three features alone, is over $450 \times 250 \times 70 = 787,500$. It is submitted that this can not be what “sufficiently specific” ever contemplated.

The next question is whether there a linear relationship/correlation between TLA4 and purity (P) in the Shestak reference? The attached Chart No. 1 is a plot of the TLA4 and P from the examples in Shelestak. It is submitted that there is no linearity or correlation evident from the Chart. For comparative purposes, Applicants include as Chart No. 2, a plot of TLA4 and P based on the examples in the present application.

The present application includes 6 independent claims. Each of those independent Claims (22, 34, 35, 36, 37 and 38) include the same linear relationship between TLA4 and P.

Thus it is submitted that no rejection based on either lack of novelty (anticipation) under 35 U.S.C. § 102(b) or lack of inventive step (obviousness) under 35 U.S.C. § 103 can be predicated on a fair reading of the Shelestak disclosure.

Claim 35 of the prior application was rejected under 35 U.S.C. § 102(b) based on the patent to Higby, U.S. 5,780,372. To the extent that the Examiner relies on Higby, the rejection is respectfully traversed..

Independent of the issue of “sufficient specificity”, Applicants provide, as Chart No. 3, a plot of TLA4 and P from the examples in Higby. It is submitted that there is no linearity or

correlation evident from the Chart, and thus it is submitted that no rejection based on either lack of novelty (anticipation) under 35 U.S.C. § 102(b) or lack of inventive step (obviousness) under 35 U.S.C. § 103 can be predicated on a fair reading of the Higby disclosure.

Claim 35 of the prior application was also rejected under 35 U.S.C. § 102(b) based on the patent to Krumwiede, U.S. 6,103,650. To the extent that the Examiner relies on Krumwiede, the rejection is respectfully traversed..

Again, independent of the issue of "sufficient specificity", Applicants provide, as Chart No. 4, a plot of TLA4 and P from the examples in Krumwiede. It is submitted that there is no linearity or correlation evident from the Chart, and thus it is submitted that no rejection based on either lack of novelty (anticipation) under 35 U.S.C. § 102(b) or lack of inventive step (obviousness) under 35 U.S.C. § 103 can be predicated on a fair reading of the Krumwiede disclosure.

For each of the foregoing reasons, the independent claims and all dependent claims are allowable.

Respectfully submitted,

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